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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,406	07/10/2003	Michael L. Newman SR.	NEW001/135871	5538
7590	01/13/2004		EXAMINER	
JAMES L. JACKSON			ROWAN, KURT C	
ANDREWS & KURTH, L.L.P.				
600 TRAVIS, SUITE 4200			ART UNIT	PAPER NUMBER
HOUSTON, TX 77002			3643	

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/618,406	NEWMAN, MICHAEL L.
	<b>Examiner</b> Kurt Rowan	<b>Art Unit</b> 3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ .	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Creel (DES. 407,461).

The patent to Creel shows a de-hooking fishing device having handle member, an integral de-hooking element extending from the handle with a straight elongate shank. The straight section terminates in a tightly bent loop of U-shaped configuration extending to a substantially straight end section disposed in a spaced relation with the elongate shank to define a narrow gap. Creel then shows a terminal section extending from the straight end section and being oriented in an outwardly diverging relation with the shank section as shown in Figs. 3-4.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Creel.

The patent to Creel shows a de-hooking device for releasing fish from a hook as discussed above. In reference to claim 2, Creel shows the de-hooking element with an annular cross-section, but does not disclose that the element is made from metal although it probably is. However, it would have been obvious to make the de-hooking element from metal since the selection of a known material is based on its suitability for the intended use. See *In re Leshin*, 125 USPQ 416. In reference to claim 3, Creel shows the terminal section and straight end section at an acute angle, but it would have been obvious to orientate the sections at an obtuse angle since changes in shape are obvious. See *In re Dailey et al.*, 149 USPQ 47.

5. Claims 4-9, 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Creel as applied to claim 1 above, and further in view of Brown.

The patent to Creel shows a de-hooking device as described above. The patent to Brown shows a de-hooking device with a handle 1 and a pivoted de-hooking element 2, 5 which opens and closes as shown in Figs. 1-2. In reference to claims 4 and 11, it would have been obvious to provide Creel with a pivoted element as shown by Brown for the purpose of making the de-hooker more compact. In reference to claims 5 and 14, Brown shows a handle 1 with a slot that extends along the handle length. Brown shows a pivot end being defined the straight shank of the integral de-hooking element. Brown shows a pivot element 3 extending through the pivot receptacle and pivot opening. In reference to claims 6 and 15, Creel shows the handle of integral construction. In reference to claims 7 and 16, Brown shows the handle member that inherently has a pair of scales or side plates, one on each side of the blade. One of the side plates is

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visible in the drawings. In reference to claims 8 and 17, Creel shows a plurality of ridges and valleys defined by the handle member. In reference to claims 9 and 18, Brown shows an angular pivot end portion the in general circles around the pivot pin and which has a frictional engagement with surfaces of the elongate slot. However, it would have been obvious to employ a circular pivot end portion since shape of the end pivot portion would be determined through routine experimentation since the function is the same and no stated problem is solved. Also, see the citation to *In re Dailey*, above. The de-hooking element resists free pivotal movement relative to the handle member or the blade would fall open. In reference to claim 12, see the rejection of claim 2, above. In reference to claim 13, see the rejection of claim 3, above.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Creel as applied to claim 1 above, and further in view of Trahan.

The patent to Creel shows a fishing de-hooker as discussed above. Creel does not disclose if the device is buoyant. The patent to Trahan shows a fishing de-hooker that is buoyant as disclosed in column 2, lines 56-63. In reference to claim 10, it would have been obvious to make the device of Creel buoyant as shown by Trahan so that the de-hooker would float if dropped in water.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Creel in view of Brown as applied to claim 11 above, and further in view of Trahan.

See the rejection of claim 10 above, now in view of Brown.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Reed, Allsop, Nunley, and Stanfield show other de-hooking devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.



Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR

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